

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of: **Miyachi and Lieberburg**

Application No: **10/784,145**

Group Art Unit:

Filing Date: **February 23, 2004**

Examiner:

Title: **Methods of Using Zonisamide as an Adjunctive Therapy for Partial Seizures**

Commissioner of Patents  
PO Box 1450  
Alexandria, VA 22313-1450

**Revocation of Power of Attorney with New Power of Attorney,  
Change of Correspondence Address, and  
Statement under 37 CFR § 3.73(b)**

I hereby revoke all previous powers of attorney given in the above-identified application.

I hereby appoint Power of Attorney with Edward D. Grieff, Registration No. 38,898 and the practitioners associated with the Customer Number **26694**.

Please change the correspondence address for the above-identified application to the address associated with the Customer Number **26694**.

I am authorized to act on behalf of the assignee, Eisai, Inc., a corporation who is the assignee of the entire right, title and interest in the above-identified application by virtue of an Assignment from the inventor Lieberburg to Elan Pharmaceuticals, Inc. (a copy of which is attached hereto); and by virtue of an Assignment from Elan Pharmaceuticals, Inc. and Elan Pharma International Limited to Eisai, Inc. (a copy of which is attached hereto).

Signature: \_\_\_\_\_

Printed or Typed Name: \_\_\_\_\_

*Michael Shih*

Title: \_\_\_\_\_

*Senior Counsel*

Date: \_\_\_\_\_, 2005

*Aug 22*

Telephone Number: 201-692-1100

## ASSIGNMENT

WHEREAS I/We, the below named inventors, [hereinafter referred to as Assignors], have made an invention entitled:

### METHODS OF USING ZONISAMIDE AS AN ADJUNCTIVE THERAPY FOR PARTIAL SEIZURES

for which I/We executed an application for United States Letters Patent concurrently herewith or filed an application for United States Letters Patent on February 23, 2004 (Application No. 10/784,145); and

WHEREAS, ELAN PHARMACEUTICALS, INC., a corporation of DELAWARE whose post office address is 800 Gateway Boulevard, South San Francisco, California 94080, (hereinafter referred to as Assignee), is desirous of securing the entire right, title, and interest in and to this invention in all countries throughout the world, and in and to the application for United States Letters Patent on this invention and the Letters Patent to be issued upon this application;

NOW THEREFORE, be it known that, for good and valuable consideration the receipt of which from Assignee is hereby acknowledged, I/We, as Assignor(s), have sold, assigned, transferred, and set over, and do hereby sell, assign, transfer, and set over unto the Assignee, its lawful successors and assigns, my/our entire right, title, and interest in and to this invention, provisional Application No. 60/448,670 filed February 21, 2004, and this application, and all divisions, and continuations thereof, and all Letters Patent of the United States which may be granted thereon, and all reissues thereof, and all rights to claim priority on the basis of the above provisional application (if any), as well as all rights to claim priority on the basis of this application, and all applications for Letters Patent which may hereafter be filed for this invention in any foreign country and all Letters Patent which may be granted on this invention in any foreign country, and all extensions, renewals, and reissues thereof; and I/We hereby authorize and request the Commissioner of Patents and Trademarks of the United States and any official of any foreign country whose duty it is to issue patents on applications as described above, to issue all Letters Patent for this invention to Assignee, its successors and assigns, in accordance with the terms of this Assignment;

AND, I/WE HEREBY covenant that I/We have the full right to convey the interest assigned by this Assignment, and I/We have not executed and will not execute any agreement in conflict with this Assignment;

AND, I/WE HEREBY further covenant and agree that I/We will, without further consideration, communicate with Assignee, its successors and assigns, any facts known to me/us respecting this invention, and testify in any legal proceeding, sign all lawful papers when called upon to do so, execute and deliver any and all papers that may be necessary or desirable to perfect the title to this invention in said Assignee, its successors or assigns, execute all divisional, continuation, and reissue applications, make all rightful oaths and generally do everything possible to aid Assignee, its successors and assigns, to obtain and enforce proper patent protection for this invention in the United States and any foreign country, it being understood that any expense incident to the execution of such papers shall be borne by the Assignee, its successors and assigns.

IN TESTIMONY WHEREOF, I/We have hereunto set our hands.

County of San Mateo )  
 )  
State of California )

ss.

Name: Ivan LIEBERBURG  
Address: 85 Hillcrest Road  
Berkeley, California 94705  
By: Ivan Lieberburg  
Date: 7/9/04

Subscribed and sworn to before me this 9<sup>th</sup> day of July, 2004  
Beverly A. Dynes, Notary Public



EXECUTION COPY

NORTH AMERICAN PATENT ASSIGNMENT

ZONEGRAN

This PATENT ASSIGNMENT (this "*Assignment*") dated as of April 27, 2004 (the "*Effective Date*"), is made by and among Elan Pharmaceuticals, Inc., a Delaware corporation with offices at 800 Gateway Blvd., South San Francisco, CA 94080 ("*EPI*"), Elan Pharma International Limited, a private limited company organized under the laws of Ireland, with offices located at 102 St. James Court, Flatts, Smiths FL04, Bermuda ("*EPIL*" and together with EPI, "*Assignor*"), and Eisai Inc., a Delaware corporation, with offices at Glenpointe Centre West, 500 Frank W. Burr Boulevard, Teaneck, NJ 07666-6741 ("*Assignee*").

RECITALS

WHEREAS, EPI and EPIL are the owners of the entire right, title and interest in certain patent rights;

WHEREAS, Assignor and Assignee, together with certain of their respective Affiliates, have entered into that certain Asset Purchase Agreement, dated as of March 30, 2004, as amended (the "*Purchase Agreement*"), pursuant to which Assignor has agreed to sell, assign, convey, transfer and deliver to Assignee certain assets, including, without limitation, such patent rights; and

WHEREAS, EPI desires to assign, convey and transfer all such rights it owns to Assignee, and Assignee desires to receive such rights from EPI, all on the terms and conditions set forth herein;

WHEREAS, EPIL desires to assign, convey and transfer all such rights it may own to Assignee, and Assignee desires to receive such rights from EPIL, all on the terms and conditions set forth herein;

NOW, THEREFORE, in partial consideration for the purchase price set forth in the Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Defined Terms. Capitalized terms used but not defined in this Assignment shall have the meaning ascribed to them in the Purchase Agreement. As used in this Assignment, the term "*North American Zonegran Patents*" shall mean those Patents owned by the Elan Companies or their Affiliates necessary for, or Primarily Related to, the Exploitation of the Product or the conduct of the Business in the United States, Canada and/or Mexico, or that claim or cover the Product, or any Improvements thereto, in the United States, Canada and/or Mexico, including, without limitation, those Patents identified on Schedule A to this Assignment.

2. Assignment. Assignor hereby sells, assigns, conveys, transfers and delivers to the Assignee, its successors and assigns, with full title guarantee, as fully and entirely as the same would have been held and enjoyed by Assignor if this sale, assignment, conveyance, transfer and delivery had not been made, and Assignee hereby purchases and acquires from Assignor, (a) all of Assignor's right, title and interest in and to the North American Zonegran Patents, and (b) without limitation to the

foregoing, all of Assignor's right, title and interest in and to any and all causes of action, claims, demands or other rights occasioned from or because of any and all past, present and future infringement of any of the North American Zonegran Patents, including, without limitation, all rights to recover damages (including, without limitation, attorneys' fees), profits and injunctive or other relief for such infringement.

3. Recordation. The Assignor hereby authorizes the United States Commissioner of Patents and Trademarks, and as appropriate, the respective patent office or governmental agency in each jurisdiction other than the United States, to record this Assignment and to issue any and all patents or certificates of invention which may be granted upon any of the North American Zonegran Patents in the name of Assignee, as the assignee to the entire interest therein. The Assignee shall have the right to file patent applications in any country based on the North American Zonegran Patents.

4. Further Assurances. The Assignor hereby agrees that it shall from time to time, at the request of the Assignee, promptly execute and deliver, or cause to be executed and delivered, such instruments, applications and documents, and take such other actions as the Assignee may reasonably request, in order to (a) enable Assignee to enjoy the full benefit of the North American Zonegran Patents, (b) vest fully and effectively in Assignee all of the North American Zonegran Patents, (c) aid in securing and maintaining patent protection for the North American Zonegran Patents throughout the world, including, without limitation, cooperating in any proceedings involving examinations, reexaminations, reissues, opposition and cancellation proceedings, priority contests, interferences, public use proceedings, court actions and the like, and (d) otherwise consummate more effectively the transactions contemplated hereby.

5. Nondisclosure. Without limitation to anything contained in the Purchase Agreement, for a period of one (1) year from the Effective Date, Assignor (a) shall neither publish nor disclose, except as provided in clause (b), any particulars of any invention claimed or first disclosed in any patent application falling within the definition of North American Zonegran Patents which particulars are not disclosed in a patent and (b) shall disclose to Assignee any such particulars promptly upon becoming aware of them, *provided, however*, that such particulars may be disclosed as required by applicable Law or any Governmental or Regulatory Authority to be disclosed, provided that Assignor uses reasonable efforts to give Assignee advance Notice of such required disclosure in sufficient time to enable the Assignee to seek confidential treatment of such information, provided further that the Assignor limits the disclosure to that information which is required to be disclosed.

6. Communications with Patent Authorities. Assignor shall promptly forward to Assignee any correspondence or other communication from any patent office or any counsel employed by Assignor in connection with any North American Zonegran Patents.

7. Non-Contravention. Notwithstanding any other provisions of this Assignment to the contrary, except in the case of Sections 4, 5, 6 and 7 of this Assignment, nothing contained in this Assignment shall in any way supersede, modify, replace, amend, change, rescind, waive, exceed, expand, enlarge or in any way affect the provisions, including, without limitation, warranties, covenants, agreements, conditions, representations, or in general any of the rights and remedies, and any of the obligations and indemnifications of Assignor or Assignee set forth in the Purchase Agreement, nor shall this Assignment expand or enlarge any remedies under the Purchase Agreement including, without limitation, any limits on indemnification specified therein. This Assignment is intended only to effect the transfer of certain property transferred pursuant to the Purchase Agreement and shall be governed entirely in accordance with the terms and conditions of the Purchase Agreement.

8. GOVERNING LAW; JURISDICTION. THIS ASSIGNMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF

NEW YORK APPLICABLE TO CONTRACTS EXECUTED AND PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PRINCIPLES. THE PARTIES HERETO AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS ASSIGNMENT SHALL BE INITIATED AND TRIED EXCLUSIVELY IN LOCAL AND FEDERAL COURTS SITTING IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK. THE AFOREMENTIONED CHOICE OF VENUE IS INTENDED BY THE PARTIES TO BE MANDATORY AND NOT PERMISSIVE IN NATURE, THEREBY PRECLUDING THE POSSIBILITY OF LITIGATION BETWEEN THE PARTIES WITH RESPECT TO OR ARISING OUT OF THIS ASSIGNMENT IN ANY JURISDICTION OTHER THAN THAT SPECIFIED IN THIS SECTION. EACH PARTY HEREBY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR SIMILAR DOCTRINE OR TO OBJECT TO VENUE WITH RESPECT TO ANY PROCEEDING BROUGHT IN ACCORDANCE WITH THIS SECTION, AND STIPULATES THAT THE LOCAL AND FEDERAL COURTS SITTING IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK SHALL HAVE PERSONAL JURISDICTION AND VENUE OVER EACH OF THEM FOR PURPOSES OF LITIGATING ANY DISPUTE, CONTROVERSY OR PROCEEDING ARISING OUT OF OR RELATED TO THIS ASSIGNMENT. EACH PARTY HEREBY AUTHORIZES AND AGREES TO ACCEPT SERVICE OF PROCESS SUFFICIENT FOR PERSONAL JURISDICTION IN ANY ACTION AGAINST IT AS CONTEMPLATED BY THIS SECTION BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, POSTAGE PREPAID TO ITS ADDRESS FOR THE GIVING OF NOTICES AS SET FORTH IN THE PURCHASE AGREEMENT, OR IN THE MANNER SET FORTH IN SECTION 13.01 OF THE PURCHASE AGREEMENT FOR THE GIVING OF NOTICE. ANY FINAL JUDGMENT RECEIVED AGAINST A PARTY IN ANY ACTION OR PROCEEDING SHALL BE CONCLUSIVE AS TO THE SUBJECT OF SUCH FINAL JUDGMENT AND MAY BE ENFORCED IN OTHER JURISDICTIONS IN ANY MANNER PROVIDED BY LAW.

9. Third Party Benefits. The terms and provisions of this Assignment are intended solely for the benefit of each party hereto and their respective successors or assigns, and it is not the intention of the parties to confer third party beneficiary rights upon any other person, except as otherwise provided in this Assignment.

10. Amendments. This Assignment may be amended, supplemented or modified only by a written instrument duly executed by each party hereto.

11. Counterparts. This Assignment may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall evidence but one instrument. Delivery of an executed counterpart of a signature page of this Assignment by facsimile or other electronic transmission shall be effective as delivery of a manually executed original counterpart of each such instrument.

12. Severability. If any provision of this Assignment is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any party under this Assignment will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Assignment will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Assignment will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom, and (d) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Assignment a legal, valid and enforceable provision as similar to the terms of such illegal, invalid or unenforceable provision as may be possible and reasonably acceptable to the parties.

13. Headings. The headings used in this Assignment have been inserted for convenience of reference only and do not define or limit the provisions hereof.

14. Binding Effect. This Assignment is binding upon, inures to the benefit of and is enforceable by the parties and their respective successors and assigns.

[SIGNATURES ON FOLLOWING PAGE]

THIS ASSIGNMENT IS EXECUTED by the authorized representatives of the parties as of the date first written above.

**ELAN PHARMACEUTICALS, INC.**

Signature : 

Name : Juan Carlos Aguilera

Title : Senior Vice President, Global Sales, Marketing and Medical Affairs

SWORN TO AND SUBSCRIBED before me this \_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

**ELAN PHARMA INTERNATIONAL LIMITED**

Signature : \_\_\_\_\_

Name : Kevin Insley

Title : Authorized Signatory

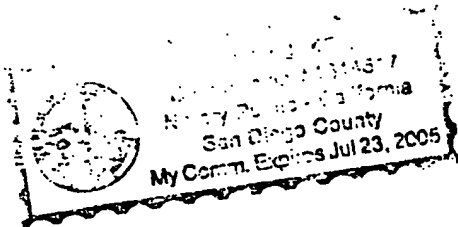
SWORN TO AND SUBSCRIBED before me this \_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

**JURAT**

State of California }  
County of San Diego } ss.



Subscribed and sworn to (or affirmed) before me  
this 21<sup>st</sup> day of April, 2004 by

(1) Juan Carlos Aguilar  
Name of Signer(s)

(2) \_\_\_\_\_  
Name of Signer(s)

[Signature]  
Signature of Notary Public

**OPTIONAL**

*Though the information in this section is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER #1  
Top of thumb here

RIGHT THUMBPRINT  
OF SIGNER #2  
Top of thumb here



THIS ASSIGNMENT IS EXECUTED by the authorized representatives of the parties as of the date first written above.

**ELAN PHARMACEUTICALS, INC.**

Signature : \_\_\_\_\_

Name : Juan Carlos Aguilera

Title : Senior Vice President, Global Sales, Marketing and Medical Affairs

SWORN TO AND SUBSCRIBED before me this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

**ELAN PHARMA INTERNATIONAL LIMITED**

Signature : \_\_\_\_\_

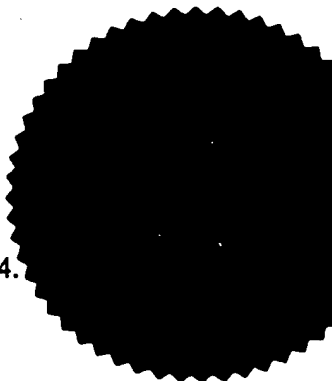
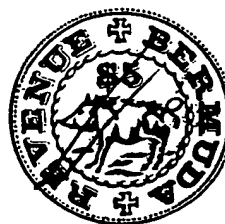
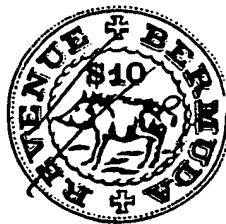
Name : Kevin Insley

Title : Authorized Signatory

SWORN TO AND SUBSCRIBED before me this 23 day of APRIL, 2004.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_



EISAI INC.

Signature: H. Shimizu

Name: Hajime Shimizu

Title: CEO

SWORN TO AND SUBSCRIBED before me this 27<sup>th</sup> day of April, 2004.

[Signature]

Notary Public

My commission expires 2/23/08

### Schedule A

Filing number	Filing date	Country	Grant Number	Grant Date
60/153,939	15/SEP/1999	US PROVISIONAL [Priority Filing]		
09/663,107	15/SEP/2000	UNITED STATES OF AMERICA	6,489,350	03/DEC/2002
60/302,149	29/JUN/2001	US PROVISIONAL [Priority Filing]		
2451728	28/JUN/2002	CANADA		
PAa2003011847	28/JUN/2002	MEXICO		
10/186,838	28/JUN/2002	UNITED STATES OF AMERICA		
60/378,446	06/MAY/2002	US PROVISIONAL [Priority Filing]		
10/429,474	02/MAY/2003	UNITED STATES OF AMERICA		
60/410,399	13/SEP/2002	US PROVISIONAL [Priority Filing]		
10/663,187	15/SEP/2003	UNITED STATES OF AMERICA		
<b>Myeloma†</b>				
60/448,970	21/FEB/2003	US PROVISIONAL [Priority Filing]		
10/784,145	02/23/04	UNITED STATES OF AMERICA		
<b>Pancreatitis</b>				
10/644,935	21/AUG/2003	UNITED STATES OF AMERICA (Priority)		
10/752,515	01/08/04	UNITED STATES OF AMERICA		
<b>Rhabdomyolysis</b>				
10/752,523	01/08/04	UNITED STATES OF AMERICA (Priority)		
<b>Hyperammonemia</b>				
10/752,516	01/08/04	UNITED STATES OF AMERICA (Priority)		
<b>Neuroleptic Malignant Syndrome</b>				
10/752,522	01/08/04	UNITED STATES OF AMERICA (Priority)		

† Owned with co-inventor Dr. Hayato Miyachi, Tokai Univ. School of Medicine